IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL No. 224 of 2001
Old No. 565/1985

1. Ram Pal S/o Khem Karan, R/o Pahlad Pur, Police Station Musaya, District Budaun.
2. Ram Swarup S/o Gedan Lal,
R/o Bhabbapur, P.S. Cantt.
District Bareilley.

.....Appellants

Versus

State

.....Opposite Party

Dated: June 06, 2007

Sri Kailash Joshi, Amicus Curiae for the appellant.
Sri Amit Bhatt learned Addl. GA holding brief of Sr. M.A. Khan for the State.

HON. DHARAM VEER, J.

This appeal, preferred under Section 374(2) of the Code of Criminal procedure 1973, (herein after referred Cr.P.C.), is directed against the judgment and order dated 18.01.1985 passed by II Additional Sessions Judge, Nainital, in Session Trial No. 11/1984, State Vs. Ram Pal and Ram Swarup under Section 393/397 I.P.C. and Session Trial No. 12/1984 State Vs. Ram Pal under Section 25 Arms Act whereby, the learned II Additional Sessions, Judge, has convicted and sentenced the appellant Ram Pal under Section 393/397 I.P.C. for 7 years R.I. and u/s 25 Arms Act, 1959 for one year R.I. Both the sentences were directed to run concurrently. Appellant Ram Swarup was convicted under Section 393 I.P.C. and he was warded sentence to undergo R.I. for 5 years.

2. In brief the prosecution story is this that on 9.10.1983 Harbir Singh the complainant has lodged the F.I.R. in Police Station, Kichha, with the allegation that he along with Harender Singh, Kuldeep Singh and Sudesh Singh, resident of Hariyana, Farm P.S., Kichha, were going on the tractor in the village Manga. When they reached near the

railway bridge and they have crossed the river, then from the other side of the river four persons had come out from the bushes. Out of these four persons, one person by showing the pistol (Tamancha) had asked them to stop the tractor and had asked to give them whatever they had. They all cried and then the person who had a pistol (Tamancha) in his hand fad fired on him but the fire was missed. Then all the four people had come down from the tractor and after beating them with lathis and dandas, they caught them at about 2.30 P.M. along with pistol (Tamancha) and the mis-fired cartridge was loaded in tamancha (pistol). When they inquired about their names, then the person who had pistol (Tamancha) in his hand, had told his name Ram Pal, son of Khem Karan, village Prahladpur, P.S. Musadhang, District Badaun, and the second person had told his name Onkar son of Mahesh Singh, R/o Mohalla Nai Basti, P.S. Baradari, District Bareilly and the third person had told his name as Ram Swarup Son of Genda Lal, village Bhabbapur, P.S. Cantt. Bareilly, District Bareilly and fourth person told his name as Nathu Lal son of Bihari Lal resident of Jiganiya, P.S. Fatehganj, District Bareilly. He has further stated that if the fire was not missed, then this person might have killed him. Along with these four persons and one pistol (Tamancha) with the miscreants, the complainant Harbir Singh, Harender Singh, Kuldeep Singh and Sudesh Singh had come to the Police Station, Kichha and then the Harbir Singh lodged the F.I.R. Ex.Ka.4. A recovery memo of pistol (Tamancha) and one missed cartridge was prepared in the Police Station, that recovery memo is Ex.Ka.3. On the basis of the F.I.R., the Head Moharrir Shiv Sahai, PW.1 had prepared a chick report Ex.Ka.1. The F.I.R. was lodged in Police Station on 9.10.1983 at 4:30 P.M., and the distance

of the Police Station as shown from the place of occurrence is 2 Kms. The entry was made in the G.D., the copy of the G.D. is Ex.Ka.2.

3. The Investigation of the case was entrusted to PW.4 Jai Prakash Tomar, Investigation Officer who has prepared the site plan on 20.10.1983 Ex.Ka.5. District Magistrate, Nainital has granted sanction for prosecution of the case under Section 25 Arms Act against the appellant Ram Pal on 20.12.1983, that sanction is Ex.Ka.7. After completing the investigation, the Investigating Officer has submitted the charge sheet against the appellants u/s 393/307 I.P.C., that charge sheet is Ex.Ka.6 and the map for the offence under Section 25 Arms Act was prepared, that is Ex.Ka.8. The charge sheet submitted under Section 25 Arms Act against appellant Ram Pal, that charge sheet is Ex.Ka.9.

4. Thereafter, the Munsif Magistrate Haldwani, has committed the case to the court of Sessions on 16.01.1984.

5. Learned II Additional Sessions Judge has framed the charge under Section 393/397 I.P.C. against the appellant Ram Pal on 12.04.1984. The charge was read over and explained to the appellant Ram Pal who denied the charge and claimed to be tried. The charge under Section 25 Arms Act was also framed against the appellant Ram Pal on 12.04.1984 by the II Additional Sessions Judge, Nainital. The charge was read over and explained to the appellant Ram Pal who also denied this charge and claimed to be tried. The charge under section 393 I.P.C. was framed against the appellant Ram Swarup and against co-accused Nathu and Onkar Singh on 12.04.1984. The charge was read over and explained to the appellant and other co-accused, who have denied the charge and claimed to be

tried. Both the trials i.e. Session trial No.11/1984 and 12/1984 were consolidated by the order of the court dated 12.04.1984 and it was directed the evidence would be lead in Session Trial No. 11/1984.

6. For proof of the case, the prosecution has examined PW. 1 Head Constable, Shiv Sahai, PW.2 Harbir Singh, the complainant of the case, PW.3 Harender Singh, who is the eyewitness and PW.4 Jay Prakash Tomar, Investigating Officer. After that the appellants were examined under Section 313 Cr.P.C. They have denied the allegations made against them, however they did not produce any witness in their defence.

7. During the course of the trial appellant Onkar and Nathu were absent and were not attending the court hence, by the order of the II Additional Sessions Judge, dated 14.11.1985 the case of the present appellants were separated from the case of Onkar and Nathu Lal.

8. After appreciating the evidence on record, the learned II Additional Sessions Judge, Nainital by his order dated 18.01.1985 has convicted the appellant Ram Pal under Section 393/397 I.P.C. and 25 Arms Act and awarded sentence to him for 7 years R.I. under Section 393/397 I.P.C. and for one year under Section 25 of Arms Act and both the sentences were directed to run concurrently. Appellant Ram Swarup was convicted under Section 393 I.P.C. and was sentenced to undergo R.I. for five years. Feeling aggrieved by the said judgment and order dated 18.01.1985, the appellants have filed the present appeal before this Court.

9. I have heard Sri Kailash Joshi, Advocate, Amicus Curiae for the appellant and Sri Amit Bhatt, Additional GA and M.A. Khan brief holder for the State.

10. The prosecution in order to prove his case, had examined PW. 1 Head Constable Shiv Sahai. He has stated that on 9.10.1983, he was posted as Head Moharrir in Police Station, Kichha. On that day, complainant Harbir Singh, Harender Singh, Sudesh Singh and Kuldeep Singh along with the appellants and two other persons Onkar & Nathu along with one tamancha (pistol) and with one-missed cartridge, had come to police station. Then Haribir Singh had submitted a written F.I.R. On the basis of this written F.I.R., a chick report Ex.Ka.1 was prepared by him and the entry was made in the G.D. by report no.26 at 16.30 hours on 9.10.1983. The copy of the G.D. was prepared in the same process that is Ex.Ka.2 Before the witnesses, the tamancha given by Harbir Singh and cartridge was sealed on the spot and the Fard was prepared and the witnesses have also signed on this Fard, that is Ex.Ka.3. The case was registered against the appellant Ram Pal under Section 25 of Arms Act also.

11. PW.2 is Harbir Singh who has stated that on 9.10.1983 at about 2.30 P.M., he along with the Harender, Sudesh and Kuldeep of Haryana Farm were going to the village Manga on tractor. He was driving the tractor and when they reached at the river and after crossing the river when they reached at another corner, four miscreants had come out from the bushes and by showing the tamancha, they had told to give whatever they have. One of the miscreants had fired on him but the fire had missed. Then by beating from dandas, they had caught these miscreants and he has snatched the tamancha from the appellant Ram

Pal. The person who had tamancha in his hand stated his name Ram Pal and rest of the accused have stated their names Onkar, Nathu Lal and Ram Swarup. Then along with these four miscreants and tamancha and cartridge, they had come to the Police Station, Kichha and lodged the report. Appellants along with Onkar and Nathu were also admitted in the Police Station. He has proved the report given by him i.e. Ex.Ka.4. He has also stated that the tamancha and cartridge were sealed in the Police Station and the Fard was prepared, i.e. Ex.Ka.3. The sealed bundle was opened in the court and the tamancha was marked Ex.1 and cartridge were marked as Ex.2. After seeing this tamancha and cartridge, he had stated that this is same tamancha and cartridge, which he had deposited in the Police Station. This witness was cross-examined at length but nothing has come out in his statement, which may create any doubt in his statement. The statement of this witness is trustworthy, reliable, believable and natural.

12. PW.3 is the Harender Singh, who is also an eyewitness. He has stated that on 9.10.1983, he was going to the village Manga on the tractor along with the Harbir Singh, Sudesh and Kuldeep. When they crossed the river near the bridge and reached in the other side of the river, the four persons had come out. The time was about 2.30 P.M. in the daylight. One person had a tamancha and he had said to give whatever they have in their possession. Then they had cried and after that one miscreant had fired but the fired was missed. After that these four appellants were caught hold by these persons by him and others by his companion and the tamancha and cartridge were taken from Ram Pal. Then along with the appellants and other two persons namely Onkar and Nathu Lal, they have come to the Police

Station, Kichha and deposited the tamancha and cartridge, and the accused Ram Swarup, Ram Pal and Onkar and Nathu Lal were also handed over to the police. Harbir P.W.2 had lodged the report in the police Station and the tamancha and cartridge were sealed. He had identified the tamancha Ex.1 and cartridge Ex.2 in the court and also the Fard which was written in the Police Station i.e Ex.Ka.3. He had also stated the Fard Ex.Ka.3 was also written in the Police Station. This witness was also cross-examined by the defence counsel at length but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is also reliable, trustworthy, believable and natural.

13. PW.4 Jai Prakash Tomar, is the Investigating Officer. He has stated that in October, 1983 he was posted in Police Station, Kichha as Sub-Inspector. The Investigation of the case was entrusted to him. During the investigation, he had recorded the statements of the witnesses. On 20.10.1983, he had prepared the site plan on he pointing out of the witnesses, that is Ex.Ka.5. After completing the investigation, he had filed the charge sheet against the appellants under Section 393/307 I.P.C. Ex.Ka.6. He has further stated that he had also investigated the case under Section 25 Arms Act against the appellant Ram Pal and has taken the sanction from the prosecution from the District Magistrate, Nainital, that sanction is Ex.Ka.7. He has also inspected the spot and prepared the site plan Ex.Ka.8 and also filed charge sheet against him that is Ex.Ka.9.

14. After completing the evidence, the statement of appellants were recorded under Section 313 I.P.C. who had denied the allegations made against them.

15. As per the statement of PW.2 Harbir Singh and PW.3 Harender Singh, it is proved that on 9.10.1983 at 2.30 P.M. when Harbir Singh, Harender Singh, Sudesh Singh and Kuldeep Singh were going on tractor towards the village Manga, when they reached near the Railway crossing and when they have crossed the river, then miscreants stopped the tractor and tried to take the articles whatever they have got in their possession forcibly. Appellant Ram Pal had fired on them but the fire was missed. They had cried and after that, the complainant Harbir Singh, Harender Singh, Sudesh Singh and Kuldeep Singh had caught the miscreants/appellants and two other persons Onkar and Nathu Lal and after beating them by the lathis and dandas, they have snatched the tamancha from Ram Pal. After that the appellants along with two other persons Onkar and Nathu were taken to the Police Station, Kichha by the complainants along with tamancha and misfired cartridge and they were handed over to the Police of Kichha. Harbir Singh PW.2 had lodged the F.I.R. in the Police Station, that is Ex.Ka.4. The Police had also prepared a recovery memo of pistol and one-missed cartridge in the Police Station, that recovery memo is Ex.Ka.3. The appellants were arrested by the police along with two other persons Onkar and Nathu. Thus, the statement of Harbir Singh and Harender Singh are reliable, trustworthy and natural and they have been cross examined at length but nothing has come out from their statements which will create doubt in their statements.

16. The prosecution has proved its case under Section 393/397 I.P.C. against the appellant Ram Pal beyond reasonable doubt and under Section 393 I.P.C. against the appellant Ram Swarup. From the above said evidence of

Harender Singh and Harbir Singh, it is well established beyond reasonable doubt that a pistol along with missed cartridge was recovered from the possession of the appellant Ram Pal on 9.10.1983 at 2.30 P.M. and the charge sheet was submitted against him after taking the sanctions from the District Magistrate, Nainital which is Ex.Ka.7. Thus, in this way the prosecution has established beyond reasonable doubt its case under Section 25 Arms Act, 1959 against the appellant Ram Pal.

17. Mr. Kailash Joshi, learned Amicus Curiae, appearing on behalf of the appellants has submitted that he does not want to press the conviction of the appellants Ram Pal and Ram Swarup because he has submitted that the conviction made to the appellants Ram Pal and Ram Swarup is justified on the basis of the evidence discussed above. He has also submitted that he does not want to press the sentence part of the appellant Ram Pal u/s 393/397 IPC for 7 years R.I. and u/s 25 Arms Act for one year R.I. in view of the fact that the appellant Ram Pal has already been released from jail after serving out his sentence. He has confined his prayer only to the point of sentence of the appellant Ram Swarup. He has further submitted that the appellant Ram Swarup is aged about 44 years and he has a family and his old mother and father are dependent on him and his children are also dependent on him and in view of this prayer, he submitted that the sentence awarded to the appellant Ram Swarup may be reduced. He has further submitted that the appellant Ram Swarup remained in jail from 9.10.1983 to 27.07.1985.

18. After considering all the facts and circumstances, the conviction and sentence awarded by the II Additional Sessions, Judge to appellant Ram Pal is justified on the basis of the circumstances and facts narrated above.

However, so far as the submission made by the learned counsel for reducing the sentence of the appellant Ram Swarup, I think if three years R.I. is awarded to the appellant Ram Swarup, the ends of justice would be met.

19. Learned Addl. GA for the State has filed a copy of the fax letter dated 11.05.2007, on the basis of which he has submitted that the appellant Ram Pal has been released from jail after completing the sentence as awarded to him by the Learned II Additional Sessions Judge, Nainital vide his judgment and order dated 18.01.1985.

20. For the reasons recorded above, the conviction and sentence passed by II Additional Sessions Judge, Nainital by his judgment and order dated 18.01.1985 convicting the appellant Ram Pal u/s 393/387 IPC for 7 years RI and u/s 25 Arms Act for one year RI, is hereby confirmed. The appeal of the appellant Ram Pal is accordingly dismissed.

21. The conviction of the appellant Ram Swarup as awarded by learned II Additional Sessions Judge, Nainital u/s 393 IPC is also confirmed. However, the sentence awarded to the appellant Ram Swarup for 5 years R.I. u/s 393 is hereby reduced to 3 years R.I. The appeal of the appellant Ram Swarup is accordingly partly allowed.

22. The sentence already served out by appellants during the trial or after the conviction or during the appeal, shall be adjusted after verifying from the records as per rules.

23. Let the record of the case be sent to the trial court concerned for compliance of the order.

(Dharam Veer, J.)

June 06, 2007
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